

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHARRON FRYE,

Plaintiff,

v.

CITY OF SACRAMENTO, et al.,

Defendants.

Case No. 2:22-cv-1936-DJC-CSK

ORDER GRANTING MODIFIED  
STIPULATED PROTECTIVE ORDER

(ECF No. 31.)

The Court has reviewed the parties' stipulated protective order below (ECF No. 31), and finds it comports with the relevant authorities and the Court's Local Rule. See L.R. 141.1. The Court APPROVES the protective order, subject to the following clarification. The Court's Local Rules indicate that once an action is closed, it "will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see *MD Helicopters, Inc. v. Aerometals, Inc.*, 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the Court will not retain jurisdiction over this protective order once the case is closed.

Dated: May 30, 2024

  
CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

ATTORNEYS FOR PLAINTIFF SHARRON FRYE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHARRON FRYE,

Plaintiff,

V.

CITY OF SACRAMENTO, et al.,

Defendants.

Case No.: 2:22-cv-01936-DJC-CSK

**AMENDED STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

## 1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1           The parties agree that that this Stipulated Protective Order may protect: All law  
2 enforcement officers' personnel records, including but not limited to internal affairs  
3 investigations, personal data, and memoranda. These records are confidential in nature, and extra  
4 caution is necessary for protection from their dissemination by any party. Further, this Order may  
5 protect data related to uninvolved third parties, including personal identifying information,  
6 photographs, or other information specifically as it relates to complaints made to the Sacramento  
7 Police Department. This information was given to the Sacramento Police Department by  
8 individuals unrelated to the lawsuit at bar, and with the understanding that measures would be  
9 taken to protect their privacy where feasible. Defendants maintain, and Plaintiff does not dispute  
10 for purposes of this stipulation, that a protective order better protects the described materials than  
11 a private agreement because of the interests at stake and the irreparable harm that could result  
12 from disclosure of the materials.

13           The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
14 Protective Order does not entitle them to file confidential information under seal; Local Rule 141  
15 sets forth the procedures that must be followed and the standards that will be applied when a  
16 party seeks permission from the court to file material under seal.

17  
18 **2. DEFINITIONS**

19           2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
20 information or items under this Order.

21           2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is  
22 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
23 of Civil Procedure 26(c).

24           2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
25 well as their support staff).

26           2.4 Designating Party: a Party or Non-Party that designates information or items that  
27 it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

28           2.5 Disclosure or Discovery Material: all items or information, regardless of the  
medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
2 responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
5 consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House  
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
9 entity not named as a Party to this action.

10 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
11 action but are retained to represent or advise a party to this action and have appeared in this  
12 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
13 that party.

14 2.10 Party: any party to this action, including all its officers, directors, employees,  
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
17 Material in this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support services  
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
20 organizing, storing, or retrieving data in any form or medium) and their employees and  
21 subcontractors.

22 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
23 “CONFIDENTIAL.”

24 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
25 Producing Party.

26 3. **SCOPE**

27 The protections conferred by this Stipulation and Order cover not only Protected Material  
28 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,

1 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
2 However, the protections conferred by this Stipulation and Order do not cover the following  
3 information: (a) any information that is in the public domain at the time of disclosure to a  
4 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
5 result of publication not involving a violation of this Order, including becoming part of the public  
6 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
7 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
8 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
9 of Protected Material at trial shall be governed by a separate agreement or order.

10 4. **DURATION**

11 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
12 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
13 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
14 defenses in this action, with or without prejudice; and (2) final judgment herein after the  
15 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
16 including the time limits for filing any motions or applications for extension of time pursuant to  
17 applicable law.

18 5. **DESIGNATING PROTECTED MATERIAL**

19 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party or  
20 Non-Party that designates information or items for protection under this Order must take care to  
21 limit any such designation to specific material that qualifies under the appropriate standards. The  
22 Designating Party must designate for protection only those parts of material, documents, items, or  
23 oral or written communications that qualify – so that other portions of the material, documents,  
24 items, or communications for which protection is not warranted are not swept unjustifiably within  
25 the ambit of this Order.

26 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown  
27 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
28 encumber or retard the case development process or to impose unnecessary expenses and burdens  
on other parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated for  
2 protection do not qualify for protection, that Designating Party must promptly notify all other  
3 Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) For information in documentary form (e.g., paper or electronic documents, but  
10 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
11 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion  
12 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins). A Party or  
14 Non-Party that makes original documents or materials available for inspection need not designate  
15 them for protection until after the inspecting Party has indicated which material it would like  
16 copied and produced. During the inspection and before the designation, all of the material made  
17 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has  
18 identified the documents it wants copied and produced, the Producing Party must determine which  
19 documents, or portions thereof, qualify for protection under this Order. Then, before producing the  
20 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page  
21 that contains Protected Material. If only a portion or portions of the material on a page qualifies for  
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
23 appropriate markings in the margins).

24 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
25 Designating Party identify on the record, before the close of the deposition, hearing, or other  
26 proceeding, all protected testimony.

27 (c) for information produced in some form other than documentary and for any other  
28 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
container or containers in which the information or item is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party’s  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
7 in accordance with the provisions of this Order.

8 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
16 by providing written notice of each designation it is challenging and describing the basis for each  
17 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
18 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
19 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
20 begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication  
21 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
22 Party must explain the basis for its belief that the confidentiality designation was not proper and  
23 must give the Designating Party an opportunity to review the designated material, to reconsider the  
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
25 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
26 has engaged in this meet-and-confer process first or establishes that the Designating Party is  
27 unwilling to participate in the meet and confer process in a timely manner.

28 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
intervention, the Designating Party shall file and serve a motion to retain confidentiality within 21

1 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and  
 2 confer process will not resolve their dispute, whichever is earlier. Each such motion must be  
 3 accompanied by a competent declaration affirming that the movant has complied with the meet and  
 4 confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make  
 5 such a motion including the required declaration within 21 days (or 14 days, if applicable) shall  
 6 automatically waive the confidentiality designation for each challenged designation. In addition,  
 7 the Challenging Party may file a motion challenging a confidentiality designation at any time if  
 8 there is good cause for doing so, including a challenge to the designation of a deposition transcript  
 9 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
 10 competent declaration affirming that the movant has complied with the meet and confer  
 11 requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 13 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.  
 15 Unless the Designating Party has waived the confidentiality designation by failing to file a motion  
 16 to retain confidentiality as described above, all parties shall continue to afford the material in  
 17 question the level of protection to which it is entitled under the Producing Party's designation until  
 18 the court rules on the challenge.

## 19 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 **Basic Principles**. A Receiving Party may use Protected Material that is disclosed or  
 21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 23 the categories of persons and under the conditions described in this Order. When the litigation has  
 24 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
 25 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a  
 26 location and in a secure manner that ensures that access is limited to the persons authorized under  
 27 this Order.  
 28



1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
3 information or item designated “CONFIDENTIAL” only to:

4           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
5 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
6 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
7 attached hereto as Exhibit A;

8           (b) the officers, directors, and employees (including House Counsel) of the Receiving Party  
9 to whom disclosure is reasonably necessary for this litigation and who have signed the  
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
12 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A);

14           (d) the court and its personnel;

15           (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
16 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
17 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
19 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
20 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
22 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
23 under this Stipulated Protective Order.

24           (g) the author or recipient of a document containing the information or a custodian or  
25 other person who otherwise possessed or knew the information.  
26  
27  
28

1     8.     **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
2           **OTHER LITIGATION**

3           If a Party is served with a subpoena or a court order issued in other litigation that compels  
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
5 Party must:

6           (a) promptly notify in writing the Designating Party. Such notification shall include a  
7 copy of the subpoena or court order;

8           (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
9 other litigation that some or all of the material covered by the subpoena or order is subject to this  
10 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

11           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
12 Designating Party whose Protected Material may be affected.

13           If the Designating Party timely seeks a protective order, the Party served with the  
14 subpoena or court order shall not produce any information designated in this action as  
15 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
16 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
17 shall bear the burden and expense of seeking protection in that court of its confidential material –  
18 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
19 Party in this action to disobey a lawful directive from another court.

20     9.     **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
21           **THIS LITIGATION**

22           (a) The terms of this Order are applicable to information produced by a Non-Party in this  
23 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
24 connection with this litigation is protected by the remedies and relief provided by this Order.  
25 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
26 additional protections.

27           (b) In the event that a Party is required, by a valid discovery request, to produce a Non-  
28 Party’s confidential information in its possession, and the Party is subject to an agreement with  
the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of  
2 the information requested is subject to a confidentiality agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this  
4 litigation, the relevant discovery request(s), and a reasonably specific description of the  
5 information requested; and

6 (3) make the information requested available for inspection by the Non-Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
8 days of receiving the notice and accompanying information, the Receiving Party may produce  
9 the Non-Party's confidential information responsive to the discovery request. If the Non-Party  
10 timely seeks a protective order, the Receiving Party shall not produce any information in its  
11 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
12 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
13 burden and expense of seeking protection in this court of its Protected Material.

14 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
16 Material to any person or in any circumstance not authorized under this Stipulated Protective  
17 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
18 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
19 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
20 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
23 **PROTECTED MATERIAL**

24 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
25 produced material is subject to a claim of privilege or other protection, the obligations of the  
26 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
27 is not intended to modify whatever procedure may be established in an e-discovery order that  
28 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a

1 communication or information covered by the attorney-client privilege or work product protection,  
2 the parties may incorporate their agreement in the stipulated protective order submitted to the  
3 court.

4 12. **MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
6 seek its modification by the court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
8 no Party waives any right it otherwise would have to object to disclosing or producing any  
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
10 Party waives any right to object on any ground to use in evidence of any of the material covered by  
11 this Protective Order.

12 12.3 Filing Protected Material. Without written permission from the Designating Party or  
13 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
14 public record in this action any Protected Material. A Party that seeks to file under seal any  
15 Protected Material must comply with Local Rule 141. Protected Material may only be filed under  
16 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
17 Pursuant to Local Rule 141, a sealing order will issue only upon a request that sets forth the  
18 statutory or other authority for sealing, the requested duration, the identity, by name or category, of  
19 persons to be permitted access to the documents, and all other relevant information. If a Receiving  
20 Party's request to file Protected Material under seal pursuant to Local Rule 141 is denied by the  
21 court, then the Receiving Party may file the information in the public record unless otherwise  
22 instructed by the court.

23 13. **FINAL DISPOSITION**

24 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
25 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
26 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
27 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
28 the Protected Material is returned or destroyed, the Receiving Party must submit a written

1 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
2 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
3 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained  
4 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of  
5 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
6 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
7 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
8 and expert work product, even if such materials contain Protected Material. Any such archival  
9 copies that contain or constitute Protected Material remain subject to this Protective Order as set  
10 forth in Section 4 (DURATION).

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12  
13 /s/ Glenn Katon  
14 Glenn Katon for Plaintiff

15  
16 /s/ Kate D.L. Brosseau  
17 Kate D.L. Brosseau for Defendants  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_